

## Appendix C. Regulatory Flexibility Act

### 1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the fishery management plan or amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

The RFA requires agencies to conduct a Regulatory Flexibility Act Analysis (RFAA) for each proposed rule. The RFAA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An RFAA is conducted to primarily determine whether the proposed action would have a “significant economic impact on a substantial number of small entities.” The RFAA provides: 1) a description of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for, the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule; 6) a description and estimate of the expected economic impacts on small entities; and 7) an explanation of the criteria used to evaluate whether the rule would impose “significant economic impacts.”

### 2 Statement of the need for, objective of, and legal basis for the rule

The need and objective of this proposed action are provided in Chapter 1. In summary, the objective of this proposed action is to address recent discoveries of deepwater coral resources and protect deepwater coral ecosystems in the South Atlantic Fishery Management Council’s (SAFMC) jurisdiction from activities that could compromise their condition. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for this proposed action.

### **3 Description and estimate of the number of small entities to which the proposed action would apply**

This proposed action, if implemented, would be expected to directly affect up to 700 vessels that commercially harvest snapper and grouper species and up to 104 vessels that commercially harvest rock shrimp in the affected areas of exclusive economic zone (EEZ) in the South Atlantic. Among the vessels that harvest rock shrimp, an estimated 9 vessels also harvest royal red shrimp. The average vessel involved in commercial snapper-grouper fishing is estimated to earn approximately \$28,700 (2012 dollars) in annual gross revenue, and the average vessel involved in rock shrimp fishing is estimated to earn approximately \$20,500 (2012 dollars) in annual gross revenue. The average annual gross revenue for vessels that harvest both rock shrimp and royal red shrimp is estimated to be approximately \$113,000 (2012 dollars).

No other small entities that would be expected to be directly affected by this proposed action have been identified.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including seafood dealers and harvesters. A business involved in commercial finfish fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$19.0 million (NAICS code 114111, Finfish Fishing). The receipts threshold for a business involved in shrimp fishing is \$5.0 million (NAICS code 114112, Shellfish Fishing). These receipts thresholds are the result of a final rule issued by the SBA on June 20, 2013, and went into effect on July 22, 2013, that increased the size standard for Finfish Fishing from \$4.0 million to \$19.0 million and the size standard for Shellfish Fishing from \$4.0 million to \$5.0 million (78 FR 37398). Because the average annual gross revenues for the commercial fishing operations expected to be directly affected by this proposed action are significantly less than the SBA revenue threshold, all these businesses are determined, for the purpose of this analysis, to be small business entities.

### **4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records**

This proposed action would not explicitly require any new reporting, record-keeping, or other compliance requirements. However, one component of this proposed action would allow vessel transit through the Oculina Bank Habitat Area of Particular Concern (HAPC) by a vessel with rock shrimp on board if the vessel maintains a minimum speed of not less than five knots, as determined by the ping (signal) rate of the vessel monitoring system (VMS) unit used by the vessel. Older VMS units are not capable of producing the required ping rate and an estimated 22 vessels would be required to purchase a newer unit in order to be able to transit through the Oculina Bank HAPC. Vessels with newer VMS units would also be required to reconfigure or upgrade their VMS hardware/software to generate the higher ping rate. For all vessels, the

communication cost would also increase by an unknown amount depending on the frequency of transit. The purchase and installation of these new units and upgrades, and the decision to transit and incur increased communication costs would be voluntary. The use of VMS units on rock shrimp vessels has been required since 2003. As a result, all affected vessels are expected to have extensive experience using VMS units and are expected to already have captains or crew with the appropriate skills and training to use VMS equipment.

## **5 Identification of all relevant federal rules, which may duplicate, overlap or conflict with the proposed rule**

No duplicative, overlapping, or conflicting federal rules have been identified.

## **6 Significance of economic impacts on a substantial number of small entities**

### **Substantial number criterion**

This proposed action, if implemented, would be expected to directly affect 104 vessels that are permitted to commercially harvest rock shrimp in the South Atlantic EEZ off Florida or Georgia. An additional 113 vessels are permitted to commercially harvest rock shrimp in the South Atlantic EEZ off South Carolina and North Carolina. These 113 vessels would not be expected to be directly affected by this proposed action. The 104 commercial rock shrimp vessels that would be expected to directly affected by this proposed action represent approximately 48 percent of the rock shrimp commercial fleet.

This proposed action would also be expected to potentially affect up to 700 vessels that commercially harvest snapper-grouper species in the South Atlantic EEZ. These 700 vessels represent the entire fleet permitted to commercially harvest snapper-grouper in the South Atlantic EEZ. However, this proposed action would only be expected to reduce the average annual snapper-grouper gross revenue by approximately 0.2 percent, as discussed below. This minimal effect suggests that this proposed action will affect relatively few vessels and not a significant portion of the snapper-grouper fleet. Nevertheless, it cannot be determined with available data if this proposed action would directly affect a substantial number of the small entities in the commercial snapper-grouper fishing industry.

### **Significant economic impacts**

The outcome of “significant economic impact” can be ascertained by examining two factors: disproportionality and profitability.

Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities expected to be directly affected by the measures in this proposed action are determined for the purpose of this analysis to be small business entities, so the issue of disproportionality does not arise.

**Profitability:** Do the regulations significantly reduce profits for a substantial number of small entities?

This proposed action contains four separate actions. The first action would expand the boundaries of the Oculina Bank HAPC. Expansion of the Oculina Bank HAPC would be expected to affect vessels that harvest snapper-grouper, rock shrimp, and royal red shrimp. The expected maximum potential reduction in total gross revenue from snapper-grouper species as a result of the proposed expansion of the Oculina Bank HAPC would be approximately \$56,000 (2012 dollars), or less than 0.3 percent of the total average annual revenue from snapper-grouper species. The actual reduction in revenue from snapper-grouper species would be expected to be reduced as fishermen adapt their fishing practices to the expansion of the HAPC and benefit from the enhanced productivity of the protected area.

All vessels that harvest royal red shrimp are expected to also harvest rock shrimp. Royal red shrimp are not managed by the SAFMC. Because royal red shrimp are not managed by the SAFMC, neither logbooks nor VMS units are required to harvest royal red shrimp. As a result, it cannot be determined with available data what portion of the average annual royal red harvest may be affected by the proposed expansion of the Oculina Bank HAPC. However, the primary effect of the proposed expansion of the Oculina Bank HAPC, as identified through public comment during the development of this proposed action and the use of VMS data, would be expected to be on the harvest of rock shrimp and not the harvest of royal red shrimp. This proposed action would be expected to reduce the total revenue from rock shrimp for all potentially affected rock shrimp fishermen (104 vessels) by a maximum of approximately \$189,500 (2012 dollars), or approximately 8.5 percent of the total average annual gross revenue from rock shrimp. Although the revenue from royal red shrimp may also be affected, as discussed above, the average annual gross revenue for vessels harvesting both rock shrimp and royal red shrimp is substantially higher than the average annual gross revenue for vessels that do not harvest royal red shrimp. As a result, the expected economic effects of the proposed expansion of the Oculina Bank HAPC on vessels that harvest royal red shrimp are expected to be minor.

The second action would establish a transit provision through the Oculina Bank HAPC for a vessel with rock shrimp on board. Transit through the Oculina Bank HAPC would require the use of a VMS unit capable of producing a ping (signal) rate sufficient to demonstrate a vessel cruising speed of not less than 5 knots. Vessels that currently use a VMS unit capable of producing this ping rate would be required to spend approximately \$200 for hardware or software upgrades to produce this ping rate. Vessels that do not currently use a VMS unit capable of producing this ping rate would be expected to have to incur new expenses of approximately \$2,800 to \$3,600 for purchase and installation of a new VMS unit and appropriated software. Any vessel transiting the Oculina Bank HAPC would be expected to incur increased communication costs because of the increased communication (ping) rate. The amount of the increased communication cost would depend on how frequently a vessel transits the area. Although these expenses would be required to allow transit through the Oculina Bank HAPC, all of these expenses would be voluntarily incurred because the proposed action would not require that vessels transit the area. Further, the net effect per entity of this proposed action

would be expected to be positive. Transit through the Oculina Bank HAPC would be expected to reduce operating expenses by allowing a vessel to avoid time consuming and costly travel around the area. Revenue may also be increased if a reduction in travel time allows longer fishing. Overall, a fisherman would only decide to incur the increased VMS costs associated with transit if they concluded a net increase in economic benefits, regardless of the source of these benefits. As a result, this proposed action would be expected to have a direct positive economic effect on all affected small entities.

Combined, the expected effects of the proposed expansion of the Oculina Bank HAPC and proposed transit provisions for vessels with rock shrimp on board would be expected to range from a minor short term reduction in the average annual gross revenue from rock shrimp to a net positive economic effect on the average rock shrimp vessel. Although the proposed expansion of the Oculina Bank HAPC would be expected to reduce rock shrimp revenue from this area, the proposed transit provisions would be expected to reduce operating costs and potentially increase rock shrimp revenue by allowing more time to harvest rock shrimp from other areas where permitted. As a result, these two proposed actions would collectively not be expected to have a significant adverse economic effect on a substantial number of small entities.

The third action would expand the boundaries of the Stetson-Miami Terrace Critical Habitat Area of Particular Concern (CHAPC). Fishing for snapper-grouper species does not normally occur in this area and fishing for other finfish or golden crab would not be expected to be affected by the proposed expansion of the CHAPC. This action would also allow a gear haul back/drift zone to accommodate the royal red shrimp fishery that occurs in this area. As a result, this proposed action would not be expected to reduce the revenue of any small entities.

The fourth action would expand the boundaries of the Cape Lookout CHAPC. Similar to the proposed expansion of the Stetson-Miami Terrace CHAPC, fishing for snapper-grouper species does not normally occur in this area and fishing for other finfish or golden crab, that does occur in this area, would not be expected to be affected. Further, unlike the Stetson-Miami Terrace CHAPC, fishing for royal red shrimp does not occur in the area of proposed expansion of the Cape Lookout CHAPC. As a result, this proposed action would not be expected to reduce the revenue of any small entities.

Based on the discussion above, it is determined that, this proposed action, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities.

## **7 Description of the significant alternatives to the proposed action and discussion of how the alternatives attempt to minimize economic impacts on small entities**

This proposed action, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities. As a result, the issue of significant alternatives is not relevant.